Office - Supreme Court, U.S.
FILED
AUG 10 1982
ALEXANDER L. STEVAS
CLERK

No. 81-2146

In the Supreme Court of the United States

OCTOBER TERM, 1982

JAMES S. SINGLETON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

MARGARET I. MILLER
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to show that the use of wire communications to transmit airline reservations was an essential part of petitioner's fraudulent airline ticket scheme.

2. Whether evidence seized from a briefcase pursuant to a search warrant based, in part, on the use of a trained drug-detecting dog was obtained in violation of petitioner's Fourth Amendment rights.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 3

Conclusion 8

TABLE OF AUTHORITIES

Cases:

United States v. *Beale*, 674 F. 2d 1327 7

United States v. *Fulero*, 498 F. 2d 748 7

United States v. *Goldstein*, 635 F. 2d 356, cert. denied, 452 U.S. 962 7

United States v. *Johnson*, 660 F. 2d 215 7

United States v. *Klein*, 626 F. 2d 22 7

United States v. *Lovasco*, 431 U.S. 783 3

United States v. *Maze*, 414 U.S. 395 ..... 3, 4, 5

United States v. *Race*, 529 F. 2d 12 7

United States v. *Sullivan*, 625 F. 2d 9 7

United States v. *Venema*, 563 F. 2d 1003 7

Constitution and statutes:

United States Constitution, Fourth Amendment 5, 7

18 U.S.C. 1343 ..... 1, 3

18 U.S.C. 2314 6

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-2146

JAMES S. SINGLETON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-9) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 1982. A petition for rehearing was denied on March 16, 1982. The petition for a writ of certiorari was filed on May 15, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the District of Hawaii, petitioner was convicted on five counts of wire fraud in violation of 18 U.S.C. 1343.[1]

---

[1]Petitioner was acquitted on a sixth count of wire fraud.

He was sentenced to concurrent terms of three years' imprisonment on each of four counts and to five years' probation on the fifth count. The court of appeals affirmed (Pet. App. A-1 to A-9).

The evidence at trial showed that in 1978 accountants employed by Hawaiian Airlines discovered that approximately 50 airline tickets, aggregating approximately $25,000, had been used without the airline having received any matching funds (Tr. 10).[2] After further review, Hawaiian Airlines determined that these 50 tickets had been stolen and reported the matter to the FBI (Tr. 12, 75). The FBI subsequently traced one of the stolen tickets to Donna Wada, who identified petitioner as the person from whom she had purchased a stolen ticket (Tr. 319-322). An employee of United Airlines, Jody Drake, also identified petitioner as the person who had exchanged stolen Hawaiian Airlines tickets for United Airline tickets (Tr. 219).

On the basis of handwriting and fingerprint exemplars submitted to the grand jury, it was determined that petitioner had filled in information on the stolen tickets. In addition, his fingerprint appeared on one of the stolen tickets (Tr. 375, 413).

Each of the tickets for which petitioner was charged had been used to purchase transportation from Honolulu to the continental United States or to obtain refunds. In some cases the tickets had been sold to others, and in some cases petitioner himself made the flights or obtained the refunds (Tr. 13-19, 101-107, 123-138, 190-195, 245-246, 272, 372, 377, 379, 413, 439).

---

[2]Hawaiian Airlines is a signatory to a nationwide agreement by which every airline recognizes validly issued tickets of other airlines. The receiving airline honors the ticket by providing transportation or a refund to the passenger, it then bills the issuing airline for the cost of the ticket (Tr. 1-9).

Finally, there was substantial testimony at trial demonstrating how wire communications between computer ticket terminals and central airline computers were necessarily involved in the transmittal and processing of the flight requests and refund claims that accompanied all of the stolen tickets (Pet. App. A-9).

ARGUMENT

1. Petitioner contends (Pet. 9-25) that the evidence is insufficient to support his conviction under 18 U.S.C. 1343 because the government failed to prove that he used interstate wire facilities as an essential part of the scheme to defraud. At the outset, we note that petitioner failed to raise this claim in the court of appeals. Below, petitioner claimed the government failed to prove he knew or should have known that his scheme would cause an interstate wire communication to be sent (Brief for Appellant at 38-44, *United States* v. *Singleton*, No. 81-1072 (9th Cir. Jan. 28, 1982)). The court of appeals properly rejected that contention, noting that there was "substantial evidence * * * to support a finding that [petitioner] knew or reasonably could have foreseen that his scheme to defraud the airlines would cause an interstate wire communication to be sent" (Pet. App. A-9).

Abandoning that claim here, petitioner now asserts that under *United States* v. *Maze*, 414 U.S. 395 (1974), his conviction must be reversed because the interstate wire communications were not sufficiently related to the scheme to bring his conduct within the purview of 18 U.S.C. 1343. Petitioner is of course precluded from raising an issue for the first time in this Court. *United States* v. *Lovasco*, 431 U.S. 783, 788-789 n.7 (1977).

In any event, *Maze* does not require reversal of petitioner's conviction. The government proved at trial that the airlines that honored the fraudulent coupons used computers to secure a seat on a flight for the passenger possessing

the coupons. In each case, as part of the airline's normal check-in procedure, a message requesting a reservation was sent by wire from Honolulu to a central computer on the mainland. None of the central computers was located in Hawaii (Pet. App. A-9).[3]

Petitioner argues (Pet. 31-42) that the use of the central computer by the airlines here, like the mailings in *Maze*, had no connection to his scheme which, he contends, was completed when he sold the bogus tickets to others and thus before the airlines used their central computers and the interstate wires to process the tickets. Initially, we note that the evidence at trial showed that petitioner himself presented to the airlines the tickets that formed the basis of counts four and five. He then flew to San Francisco and obtained a refund on the unused portions of one of the tickets.[4] Thus, as to those counts, there is a plain and direct

---

[3]We note that the trial judge dismissed Count 6 because he believed the government had failed to prove beyond a reasonable doubt that Western Airlines, which had honored the coupon upon which Count 6 was based, had used its central computer in checking in the passenger who had presented the fraudulent coupon (Tr. 470, 479-480).

[4]An agent for United Airlines testified that on August 22, 1978, a man exchanged two of the fraudulent coupons prepared on the Hawaiian Airline ticket blanks in the names of "L. Hall" and "W. Love" for tickets for a United flight to New York and a return to Honolulu through Los Angeles. The agent used his computer terminal to book the passengers on a United flight leaving that evening for San Francisco and printed out new tickets for them. The passenger exchanging the tickets indicated he wanted a refund on the return portion of the flights. The agent warned the passenger, however, that he would not be able to recalculate the fare and issue refunds in time for the passengers to make the flight to San Francisco. No refund was given and the two passengers flew to San Francisco on the United flight. Company records showed that the remaining coupon for "W. Love" was surrendered in San Francisco for a refund (Tr. 121-137, 141, 247). Petitioner's palm print was on this refund check (Tr. 12, 411-413).

A business associate of petitioner's testified that petitioner had admitted to him in April 1979 that he had been dealing in fraudulent airline tickets. Petitioner had told this witness that he had sold some of

nexus between the use of the computer system and petitioner's scheme to defraud the airlines. Petitioner's sentence on the other counts was concurrent with his sentence on Count 4.

Even if petitioner had not himself presented stolen tickets, however, his wire fraud conviction would still not be subject to challenge. The interstate wire communications were an integral and essential part of the scheme to defraud the airlines, because it was through the use of the computer that the stolen tickets were honored for flights and refunds. The persons to whom petitioner sold the tickets would hardly have allowed him to retain the fruits of his crime had they been unable to procure reservations and use the tickets for travel. In *Maze*, by contrast, the defendant used a stolen credit card to pay for motel lodging. Federal jurisdiction was predicated on the subsequent mailing of credit slips between the motel operator, the bank and the owner of the credit card. This Court held that these mailings were insufficiently related to the credit card fraud, since the defendant had by that time secured the full fruits of his fraud and had no interest in whether the mailings ever occurred.

2. Petitioner also contends (Pet. 43-45) that his Fourth Amendment rights were violated by the use of a dog to detect marijuana in his briefcase when he was arrested in California on state charges unrelated to the instant case. This contention is without merit.

---

the fraudulent tickets and that on other occasions he had used them to obtain refunds by using a portion of the tickets to obtain first class passage on a flight to New York and then flying back to Honolulu or elsewhere on a coach ticket, obtaining the difference in price between the flight fares as a refund (Tr. 265, 269-271). Given petitioner's admission that he used the fraudulent tickets to obtain flights and refunds and the presence of his palm print on the refund check issued to "W. Love," there was sufficient evidence to support a finding that petitioner himself gave the United agent the tickets for "L. Hall" and "W. Love" to obtain the reservations on the flight to San Francisco.

The circumstances surrounding this search were as follows. When petitioner was arrested by California police for a previous, unrelated assault on his wife, he was carrying a briefcase (S.H. 5).[3] He unsuccessfully attempted to give the briefcase to a companion and refused permission for the police to search it (S.H. 32). At the time she swore out her complaint, petitioner's wife had informed state police that she had seen a substance in petitioner's briefcase that she believed to be narcotics (S.H. 26). Based on this information, the police used a dog trained in the detection of narcotics to sniff the briefcase, and the dog reacted positively (S.H. 196). Relying upon the canine examination, petitioner's wife's statement, and other information the police possessed that indicated the briefcase might contain illegal drugs, the state officials obtained a search warrant from a magistrate and opened the briefcase (S.H. 297-301). The search revealed some Hawaiian Airline tickets, identification cards and marijuana (S.H. 212-213). California officials turned over the contents of the briefcase to federal authorities.

Petitioner was subsequently indicted by a federal grand jury for interstate transportation of a stolen Hawaiian Airlines ticket valued in excess of $5,000, in violation of 18 U.S.C. 2314 (*United States* v. *Singleton*, Crim. No. 79-1458 (D. Hawaii)). Petitioner moved to suppress the airline tickets seized from his briefcase. Later, petitioner also moved to suppress the contents of his briefcase in the instant case. Although petitioner and the government agreed to abide by the court's ruling on the suppression motion in the prior case, the instant case proceeded to trial before the motion in the prior case was decided. The district

---

[3] "S.H." refers to the transcript of a suppression hearing held on September 8, 1980 in *United States* v. *Singleton*, Crim. No. 79-1458 (D. Hawaii), which was made part of the record in the instant case.

court then declared that, given this circumstance, it would treat the motion to suppress as if it had been granted (Tr. 418; Pet. App. A-2 to A-3, A-5).[6]

In accordance with the district court's ruling, the government did not introduce at trial any evidence taken from the briefcase or any fruits of such evidence; consequently, as the court of appeals found (Pet. App. A-5), petitioner was not prejudiced by the allegedly illegal search. Moreover, the courts of appeals have consistently held that where, as here, the police have a reasonable suspicion that luggage or a similar container contains illegal drugs, the use of dogs trained in drug detection to sniff for the presence of controlled substances does not violate the Fourth Amendment. See *United States* v. *Beale*, 674 F. 2d 1327, 1335 (9th Cir. 1982); *United States* v. *Johnson*, 660 F. 2d 21, 22-23 (2d Cir. 1981); *United States* v. *Goldstein*, 635 F. 2d 356, 360-361 (5th Cir.), cert. denied, 452 U.S. 962 (1981); *United States* v. *Klein*, 626 F. 2d 22, 26-27 (7th Cir. 1980); *United States* v. *Sullivan*, 625 F. 2d 9, 13 (4th Cir. 1980); *United States* v. *Venema*, 563 F. 2d 1003, 1006 (10th Cir. 1977); *United States* v. *Race*, 529 F. 2d 12 (1st Cir. 1976); *United States* v. *Fulero*, 498 F. 2d 748 (D.C. Cir. 1974).[7] Consequently, petitioner's Fourth Amendment rights were not violated by the use of the dog to examine his briefcase.

---

[6]The indictment in the prior case was dismissed before a final order was issued on the motion (Pet. App. A-2 to A-3).

[7]It is our position, in line with many of the cited opinions, that no legitimate expectation of privacy is implicated by a search of the air in the environs of a suitcase, and therefore that not even reasonable suspicion is required for such investigative activity. Whether or not that view is correct, there was plainly sufficient basis in this case to satisfy a "reasonable suspicion" requirement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

MARGARET I. MILLER
Attorney

AUGUST 1982

DOJ-1982-08